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108TH CONGRESS
2D SESSION**S. 297****[Report No. 108–403]**

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

NOVEMBER 10, 2004

Reported under authority of the order of the Senate of October 11, 2004, by
Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Acknowledg-
5 ment Process Reform Act of 2003”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 ~~(a) FINDINGS.~~—Congress finds that—

3 (1) Indian tribes were sovereign governmental
4 entities before the establishment of the United
5 States;

6 (2) the United States has entered into and rati-
7 fied treaties with many Indian tribes for the purpose
8 of establishing government-to-government relation-
9 ships between the United States and the Indian
10 tribes;

11 ~~(3) Federal court decisions have recognized the~~
12 ~~constitutional power of Congress to establish govern-~~
13 ~~ment-to-government relationships with Indian tribes;~~

14 (4) in 1970, President Nixon ended the termi-
15 nation policy and inaugurated the policy of Indian
16 self-determination;

17 ~~(5) in 1978—~~

18 ~~(A) the Secretary of the Interior delegated~~
19 ~~authority to the Assistant Secretary for Indian~~
20 ~~Affairs to establish a formal process by which~~
21 ~~the United States acknowledges an Indian tribe;~~
22 ~~and~~

23 ~~(B) the Bureau of Indian Affairs estab-~~
24 ~~lished the Branch of Acknowledgment and Re-~~
25 ~~search to carry out the Federal acknowleg-~~
26 ~~ment process; and~~

1 (6) the Federal acknowledgment process was in-
 2 tended to provide the Assistant Secretary with an in-
 3 formed and well-researched basis for making any de-
 4 cision to acknowledge an Indian tribe.

5 (b) PURPOSES.—The purposes of this Act are—

6 (1) to ensure that, in any case in which the
 7 United States acknowledges an Indian tribe, it does
 8 so with a consistent legal, factual, and historical
 9 basis;

10 (2) to provide clear and consistent standards to
 11 review documented petitions for acknowledgment;
 12 and

13 (3) to clarify evidentiary standards and expedite
 14 the administrative review process for petitions by—

15 (A) establishing deadlines for decisions;

16 and

17 (B) providing adequate resources to pro-
 18 cess petitions.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) **ACKNOWLEDGMENT.**—The term “acknowl-
 22 edgment”, with respect to a determination by the
 23 Assistant Secretary, means acknowledgment by the
 24 United States that—

1 (A) an Indian group is an Indian tribe
 2 having a government-to-government relationship
 3 with the United States; and

4 (B) the members of the Indian group are
 5 eligible for the programs and services provided
 6 by the United States to members of Indian
 7 tribes because of the status of those members
 8 as Indians.

9 (2) ASSISTANT SECRETARY.—The term “Assist-
 10 ant Secretary” means the Assistant Secretary for
 11 Indian Affairs of the Department.

12 (3) AUTONOMOUS.—The term “autonomous”,
 13 with respect to an Indian group and in the context
 14 of the history, geography, culture, and social organi-
 15 zation of the Indian group, means an Indian group
 16 that exercises the political influence or authority of
 17 the Indian group independently of the control of any
 18 other Indian group.

19 (4) BOARD.—The term “Board” means the
 20 Independent Review and Advisory Board established
 21 under section 6(a).

22 (5) BUREAU.—The term “Bureau” means the
 23 Bureau of Indian Affairs.

24 (6) COMMUNITY.—The term “community”
 25 means any group of people living within a particular

1 area that, in the context of the history, culture, and
 2 social organization of the group, and taking into ac-
 3 count the geography of the region in which the
 4 group is located, is able to demonstrate that—

5 (A) consistent interactions and significant
 6 social relationships exist within the member-
 7 ship; and

8 (B) the members of the group are differen-
 9 tiated from and identified as distinct from non-
 10 members.

11 (7) CONTINUOUS.—With respect to the history
 12 of a group, the term “continuous” means the period
 13 beginning with calendar year 1900 and continuing to
 14 the present time substantially without interruption.

15 (8) DEPARTMENT.—The term “Department”
 16 means the Department of the Interior.

17 (9) DOCUMENTED PETITION.—The term “docu-
 18 mented petition” means a petition for acknowledg-
 19 ment consisting of a detailed, factual exposition and
 20 arguments, and related documentary evidence, that
 21 specifically address requirements for acknowledg-
 22 ment established by the Assistant Secretary under
 23 section 4(b).

24 (10) HISTORICAL PERIOD.—The term “histor-
 25 ical period” means the period beginning with 1900

and continuing through the date of submission of a petition for acknowledgment under this Act.

(11) HISTORY.—The term “history”, with respect to an Indian group or Indian tribe, means the existence of the Indian group or Indian tribe during the historical period.

(12) INDEPENDENT RESEARCH INSTITUTION.—The term “independent research institution” means an academic or museum institution that—

(A) employs significant resources toward the study of anthropology and other human sciences that are commonly used in reviewing petitions for acknowledgment; and

(B) could readily detail those resources to assist the Assistant Secretary in reviewing those petitions.

(13) INDIAN GROUP.—The term “Indian group” means any Indian band, pueblo, village, or community that is not acknowledged.

(14) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(15) INTERESTED PARTY.—

(A) IN GENERAL.—The term “interested party” means any person, organization, or other entity that—

(i) establishes a legal, factual, or property interest in a determination of acknowledgment; and

(ii) requests an opportunity to submit comments or evidence, or to be kept informed of general actions, regarding a specific petition.

(B) INCLUSIONS.—The term “interested party” includes—

(i) the Governor of any State;

(ii) the Attorney General of any State;

(iii) any unit of local government; and

(iv) any Indian tribe, or Indian group, that may be directly affected by a determination of acknowledgment.

(16) LETTER OF INTENT.—The term “letter of intent” means an undocumented letter or resolution that—

(A) indicates the intent of an Indian group to submit a documented petition for Federal acknowledgment;

1 (B) is dated and signed by the governing
2 body of the Indian group; and

3 (C) is submitted to the Department.

4 (17) PETITIONER.—The term “petitioner”
5 means any Indian group that submits a letter of in-
6 tent to the Assistant Secretary.

7 (18) PILOT PROJECT.—The term “pilot
8 project” means the Federal acknowledgment re-
9 search pilot project established under section 6(e).

10 (19) POLITICAL INFLUENCE OR AUTHORITY.—
11 The term “political influence or authority”, with re-
12 spect to the exercise or maintenance by an Indian
13 group, means the use by the Indian group of a tribal
14 council, leadership, internal process, or other mecha-
15 nism, in the context of the history, culture, and so-
16 cial organization of the Indian group, as a means
17 of—

18 (A) influencing or controlling the behavior
19 of members of the Indian group in a significant
20 manner;

21 (B) making decisions for the Indian group
22 that substantially affect members of the Indian
23 group; or

1 (C) representing the Indian group in deal-
 2 ing with nonmembers in matters of consequence
 3 to the Indian group.

4 (20) SECRETARY.—The term “Secretary”
 5 means the Secretary of the Interior.

6 (21) TREATY.—The term “treaty” means any
 7 treaty—

8 (A) negotiated and ratified by the United
 9 States on or before March 3, 1871, with, or on
 10 behalf of, any Indian group or Indian tribe;

11 (B) made by any government with, or on
 12 behalf of, any Indian group or Indian tribe, as
 13 a result of which the Federal Government or
 14 the colonial government that was the prede-
 15 cessor to the Federal Government subsequently
 16 acquired territory by purchase, conquest, annex-
 17 ation, or cession; or

18 (C) negotiated by the United States with,
 19 or on behalf of, any Indian group in California,
 20 regardless of whether the treaty was subse-
 21 quently ratified.

22 (22) TRIBAL ROLL.—The term “tribal roll”
 23 means a list exclusively of individuals who—

24 (A)(i) have been determined by an Indian
 25 tribe to meet the membership requirements of

the Indian tribe, as described in the governing document of the Indian tribe; or

(ii) in the absence of a governing document that describes those requirements, have been recognized as members of the Indian tribe by the governing body of the Indian tribe; and

(B) have affirmatively demonstrated consent to being listed as members of the Indian tribe.

10 **SEC. 4. ACKNOWLEDGMENT PROCESS.**

11 (a) LETTER OF INTENT.—

12 (1) IN GENERAL.—An Indian group that de-
13 sires to initiate with the Department a petition for
14 acknowledgment shall submit to the Assistant Sec-
15 retary a letter of intent that provides to the Assist-
16 ant Secretary relevant information concerning the
17 Indian group that may be used to provide notice to
18 interested parties.

19 (2) CONTENTS.—The Indian group shall in-
20 clude in the letter of intent, to the maximum extent
21 practicable—

22 (A) the current name of the Indian group
23 and any name by which the Indian group may
24 have been identified throughout the history of
25 the Indian group;

1 (B) the 1 or more names of the governing
2 body of the Indian group;

3 (C) the current address of the governing
4 body of the Indian group; and

5 (D) a brief narrative of the history of the
6 Indian group describing—

7 (i) the geographic areas in which the
8 Indian group may have been located dur-
9 ing that history; and

10 (ii) any relationships of the Indian
11 group with other Indian tribes or Indian
12 groups.

13 (3) NOTICE.—Not later than 90 days after the
14 date of receipt of a letter of intent from an Indian
15 group, the Assistant Secretary shall notify the In-
16 dian group and interested parties whether the letter
17 of intent reasonably identifies the Indian group.

18 (b) REQUIREMENTS FOR PETITIONS.—

19 (1) EVIDENCE.—

20 (A) IN GENERAL.—Except as provided in
21 paragraph (2), on or after filing a letter of in-
22 tent, an Indian group that seeks acknowledg-
23 ment shall submit to the Assistant Secretary a
24 petition accompanied by evidence that dem-

1 onstrates the existence of the Indian group dur-
2 ing the historical period.

3 ~~(B) EVIDENCE RELATING TO HISTORICAL~~
4 ~~EXISTENCE.~~—To establish the existence of an
5 Indian group during the historical period, a pe-
6 tition shall include evidence that demonstrates
7 with reasonable likelihood that each factor de-
8 scribed in section 5 with respect to the petition
9 has been achieved by the petitioner.

10 ~~(C) ACCESS TO LIBRARY OF CONGRESS~~
11 ~~AND NATIONAL ARCHIVES.~~—On request by a
12 petitioner, the appropriate officials of the Li-
13 brary of Congress and the National Archives
14 shall permit access by the petitioner to the re-
15 sources, records, and documents relating to the
16 petitioner for the purposes of conducting re-
17 search and preparing evidence concerning the
18 status of the petitioner.

19 ~~(2) INELIGIBLE GROUPS AND ENTITIES.~~—The
20 following groups and entities shall not be eligible to
21 submit to the Assistant Secretary a petition for ac-
22 knowledge under this Act:

23 (A) Any Indian tribe, organized band,
24 pueblo, community, or Alaska Native entity

1 that, as of the date of enactment of this Act,
2 is acknowledged.

3 (B) Any Indian group, political faction, or
4 community that separates from the main popu-
5 lation of an Indian tribe, unless the Indian
6 group, faction, or community establishes to the
7 satisfaction of the Assistant Secretary that the
8 Indian group, political faction, or community
9 has functioned as an autonomous Indian group
10 throughout the historical period.

11 (C) Any Indian group, or successor in in-
12 terest of an Indian group (other than an Indian
13 tribe, organized band, pueblo, community, or
14 Alaska native entity described in subparagraph
15 (A)), that, before the date of enactment of this
16 Act, in accordance with regulations promul-
17 gated by the Secretary, petitioned for, and was
18 denied or refused, acknowledgment based on
19 the merits of the petition (except that nothing
20 in this subparagraph excludes any group that
21 Congress has identified as an Indian group but
22 has not identified as an Indian tribe).

23 (D) Any Indian group the relationship of
24 which with the Federal Government was ex-
25 pressly terminated by an Act of Congress.

1 (c) NOTICE OF RECEIPT OF A PETITION; SCHED-
2 ULE.—

3 (1) PUBLICATION.—

4 (A) IN GENERAL.—Not later than 30 days
5 after the date on which the Assistant Secretary
6 receives a documented petition under subsection
7 (b), the Assistant Secretary shall publish in the
8 Federal Register a notice of receipt of the peti-
9 tion.

10 (B) INCLUSIONS.—The notice shall in-
11 clude—

12 (i) the name and location of the peti-
13 tioner;

14 (ii) such other information as the As-
15 sistant Secretary determines will identify
16 the petitioner;

17 (iii) the date of receipt of the petition;

18 (iv) information describing 1 or more
19 locations at which a copy of the petition
20 and related submissions may be examined
21 by the public; and

22 (v) a description of the procedure by
23 which an interested party may submit—

1 (I) evidence in support of or in
2 opposition to the request of the peti-
3 tioner for acknowledgment; or

4 (II) a request to be kept in-
5 formed of all actions affecting the pe-
6 tition.

7 (2) SCHEDULE.—Not later than 60 days after
8 the date of publication of a notice under paragraph
9 (1)(A), the Assistant Secretary shall establish a
10 schedule for—

11 (A) the submission of evidence and argu-
12 ments relating to the petition; and

13 (B) the publication of proposed findings of
14 the Assistant Secretary with respect to the peti-
15 tion.

16 (d) REVIEW OF PETITIONS.—

17 (1) IN GENERAL.—On receipt of a documented
18 petition, the Assistant Secretary, in accordance with
19 the schedule established under subsection (c)(2),
20 shall—

21 (A) conduct a review to determine whether
22 the petitioner is entitled to acknowledgment;
23 and

1 ~~(B)~~ publish in the Federal Register the
2 proposed findings of the Assistant Secretary
3 with respect to that determination.

4 ~~(2)~~ CONTENT OF REVIEW.—The review con-
5 ducted under paragraph ~~(1)~~ shall include consider-
6 ation of—

7 ~~(A)~~ the petition;

8 ~~(B)~~ any supporting evidence; and

9 ~~(C)~~ any factual statements contained in
10 the petition relating to other submissions; in-
11 cluding oral accounts of the history of the peti-
12 tioner submitted by the petitioner.

13 ~~(3)~~ CONSIDERATION OF EVIDENCE.—Evidence
14 received from interested parties under subsection
15 ~~(c)(1)(B)(v)(I)~~ shall be—

16 ~~(A)~~ considered by the Assistant Secretary;
17 and

18 ~~(B)~~ noted in any final determination re-
19 garding a petition.

20 ~~(4)~~ OTHER RESEARCH.—In conducting a review
21 under this subsection, the Assistant Secretary
22 may—

23 ~~(A)~~ initiate other research for any purpose
24 relating to—

25 ~~(i)~~ analysis of the petition; or

1 (ii) the acquisition of additional infor-
 2 mation concerning the status of the peti-
 3 tioner;

4 (B) initiate research through the pilot
 5 project or the Board; and

6 (C) consider evidence submitted by inter-
 7 ested parties, including oral accounts of the his-
 8 tory of the petitioner submitted by other Indian
 9 tribes.

10 (5) EXCEPTION FOR LACK OF CERTAIN EVI-
 11 DENCE.—If the Assistant Secretary determines that,
 12 for any period of time, evidence necessary to carry
 13 out this subsection is lacking, the lack of evidence
 14 shall not be the basis for a determination of the As-
 15 sistant Secretary not to acknowledge a petitioner if
 16 the Assistant Secretary determines that the lack of
 17 evidence may be attributed to—

18 (A) any applicable official act of the Fed-
 19 eral Government or a State government; or

20 (B) any applicable unofficial act of an offi-
 21 cer or agent of the Federal Government or a
 22 State government.

23 (c) FINAL DETERMINATION.—

24 (1) IN GENERAL.—On review of all evidence
 25 submitted under section 5 and this section and the

1 results of research conducted under section 5 and
 2 this section by the Assistant Secretary (including
 3 through the pilot project or the Board), and after
 4 providing a petitioner an opportunity to respond to
 5 proposed findings of the Assistant Secretary against
 6 acknowledgment, the Assistant Secretary shall make
 7 a final determination in writing whether the peti-
 8 tioner is entitled to acknowledgment.

9 ~~(2) FACTS AND CONCLUSIONS.~~—A final deter-
 10 mination under paragraph (1) shall include all facts
 11 and conclusions of law in accordance with which the
 12 final determination was made.

13 ~~(3) NOTIFICATION OF ACKNOWLEDGMENT.~~—If
 14 the Assistant Secretary determines under paragraph
 15 (1) that a petitioner is entitled to acknowledgment,
 16 the Assistant Secretary shall—

17 (A) acknowledge the petitioner;

18 (B) notify the petitioner and any interested
 19 parties of the final determination to acknowl-
 20 edge the petitioner;

21 (C) provide to the petitioner and any inter-
 22 ested parties a copy of the final determination;
 23 and

24 (D) not later than 7 days after notifying
 25 the petitioner and any interested parties under

1 subparagraph (B), publish in the Federal Reg-
 2 ister a notice of the final determination of ac-
 3 knowledge.

4 (f) JUDICIAL REVIEW.—

5 (1) IN GENERAL.—Not later than 60 days after
 6 the date of publication of the notice of a final deter-
 7 mination described in subsection (c)(3)(D), a peti-
 8 tioner may seek judicial review of the final deter-
 9 mination by the United States District Court for the
 10 District of Columbia.

11 (2) STATEMENT OF INTENT.—It is the intent of
 12 Congress that, in accordance with Federal law relat-
 13 ing to interpretations of treaties and Acts of Con-
 14 gress affecting the rights, powers, privileges, and im-
 15 munities of Indian tribes, any ambiguity in this Act
 16 be liberally construed in favor of an Indian group or
 17 Indian tribe.

18 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
 19 authorized to be appropriated to carry out this section
 20 \$5,000,000 for each of fiscal years 2004 through 2013.

21 **SEC. 5. DOCUMENTED PETITIONS.**

22 (a) FACTORS FOR CONSIDERATION.—A petition for
 23 acknowledgment submitted by an Indian group shall be
 24 in any readable form that—

1 (1) clearly indicates that the petition is a docu-
 2 mented petition requesting acknowledgment of the
 3 Indian group; and

4 (2) contains detailed, specific evidence as de-
 5 scribed in subsections (b) through (g).

6 (b) STATEMENT OF FACTS RELATING TO IDEN-
 7 TITY.—

8 (1) IN GENERAL.—A petition described in sub-
 9 section (a) shall contain a statement of facts and an
 10 analysis of those facts establishing that the peti-
 11 tioner has been identified as an Indian group in the
 12 United States on a substantially continuous basis.

13 (2) PREVIOUS DENIALS OF STATUS.—The As-
 14 sistant Secretary shall not consider any evidence
 15 that the status of the petitioner as an Indian group
 16 has previously been denied to be conclusive evidence
 17 that the factor described in paragraph (1) has not
 18 been met.

19 (3) EVIDENCE RELATING TO IDENTITY.—In de-
 20 termining the Indian identity of a group, the Assist-
 21 ant Secretary may use as evidence 1 or more of the
 22 following:

23 (A) An identification of the petitioner as
 24 an Indian entity by any department, agency, or
 25 instrumentality of the Federal Government.

1 ~~(B)~~ A relationship between the petitioner
2 and any State government, based on an identi-
3 fication of the petitioner by the State as an In-
4 dian entity.

5 ~~(C)~~ Any dealings of the petitioner with a
6 county or political subdivision of a State in a
7 relationship based on an identification of the
8 petitioner as an Indian group.

9 ~~(D)~~ An identification of the petitioner as
10 an Indian group by records in a private or pub-
11 lic archive, courthouse, church, or school.

12 ~~(E)~~ An identification of the petitioner as
13 an Indian group by an anthropologist, histo-
14 rian, or other scholar.

15 ~~(F)~~ An identification of the petitioner as
16 an Indian group in a newspaper, book, or simi-
17 lar medium.

18 ~~(G)~~ An identification of the petitioner as
19 an Indian group by an Indian tribe or by a na-
20 tional, regional, or State Indian organization.

21 ~~(H)~~ An identification of the petitioner as
22 an Indian group by a foreign government or an
23 international organization.

24 ~~(I)~~ Such other evidence of identification as
25 may be provided by a person or entity other

1 than the petitioner or a member of the member-
2 ship of the petitioner.

3 ~~(c) STATEMENT OF FACTS RELATING TO EVIDENCE~~
4 ~~OF COMMUNITY.—~~

5 ~~(1) IN GENERAL.—~~A petition described in sub-
6 ~~section (a)~~ shall include a statement of facts and an
7 analysis of those facts establishing that a predomi-
8 nant portion of the membership of the petitioner—

9 ~~(A)~~ comprises a community distinct from
10 the communities surrounding that community;
11 and

12 ~~(B)~~ has existed as a community through-
13 out the historical period.

14 ~~(2) EVIDENCE RELATING TO COMMUNITY.—~~In
15 determining whether the membership of the peti-
16 tioner meets the requirements of paragraph ~~(1)~~, the
17 Assistant Secretary may use as evidence 1 or more
18 of the following:

19 ~~(A)~~ Significant rates of marriage within
20 the membership of the petitioner, or, as may be
21 culturally required, patterned out-marriages
22 with other Indian populations.

23 ~~(B)~~ Significant social relationships con-
24 necting individual members of the petitioner.

1 (C) Significant rates of informal social
2 interaction that exist broadly among the mem-
3 bers of the petitioner.

4 (D) A significant degree of shared or coop-
5 erative labor or other economic activity among
6 the membership of the petitioner.

7 (E) Evidence of strong patterns of dis-
8 crimination or other social distinctions against
9 members of the petitioner by nonmembers.

10 (F) Shared sacred or secular ritual activity
11 encompassing a majority of members of the pe-
12 titioner.

13 (G) Cultural patterns that—

14 (i) are shared among a significant
15 portion of the members of the petitioner;

16 (ii) are different from the cultural
17 patterns of the non-Indian populations
18 with whom the membership of the peti-
19 tioner interacts;

20 (iii) function as more than a symbolic
21 identification of the petitioner as Indian;
22 and

23 (iv) may include language, kinship, or
24 religious organizations, or religious beliefs
25 and practices.

1 (H) The persistence of a named, collective
 2 Indian identity during a continuous period of at
 3 least 50 years, notwithstanding any change in
 4 name.

5 (I) A demonstration of historical political
 6 influence or authority of the petitioner.

7 (J) A demonstration that not less than 50
 8 percent of the members of the petitioner exhibit
 9 collateral kinship ties through generations to
 10 the third degree.

11 (3) CRITERIA FOR SUFFICIENT EVIDENCE.—

12 The Assistant Secretary shall consider a petitioner
 13 to have provided sufficient evidence of community
 14 under this subparagraph if the petitioner has pro-
 15 vided to the Assistant Secretary evidence dem-
 16 onstrating that, throughout the historical period—

17 (A)(i) more than 50 percent of the mem-
 18 bers of the petitioner reside in a particular geo-
 19 graphical area exclusively, or almost exclusively,
 20 composed of members of the group; and

21 (ii) the balance of the membership main-
 22 tains consistent social interaction with other
 23 members of the petitioner;

1 ~~(B)~~ not less than $\frac{1}{3}$ of the marriages of
 2 the petitioner are between members of the peti-
 3 tioner;

4 ~~(C)~~ not less than 50 percent of the mem-
 5 bers of the petitioner maintain distinct cultural
 6 patterns, including language, kinship, and reli-
 7 gious organizations, or religious beliefs or prac-
 8 tices;

9 ~~(D)~~ distinct community social institutions
 10 (such as kinship organizations, formal or infor-
 11 mal economic cooperation, and religious organi-
 12 zations) encompass at least 50 percent of the
 13 members of the petitioner; or

14 ~~(E)~~ the petitioner has met the requirement
 15 under subsection ~~(d)(1)~~ using evidence de-
 16 scribed in subsection ~~(d)(2)~~.

17 ~~(d) STATEMENT OF FACTS RELATING TO AUTONO-~~
 18 ~~MOUS NATURE OF PETITIONER.—~~

19 ~~(1) IN GENERAL.—~~A petition described in sub-
 20 section ~~(a)~~ shall include a statement of facts and an
 21 analysis of those facts establishing that the peti-
 22 tioner has maintained political influence or authority
 23 over members of the petitioner throughout the his-
 24 torical period.

1 ~~(2) EVIDENCE RELATING TO AUTONOMOUS NA-~~
 2 ~~TURE.—In determining whether a petitioner is an~~
 3 ~~autonomous entity under paragraph (1), the Assist-~~
 4 ~~ant Secretary may use as evidence 1 or more of the~~
 5 ~~following:~~

6 ~~(A) A demonstration that the petitioner is~~
 7 ~~capable of mobilizing significant numbers of~~
 8 ~~members and significant member resource for~~
 9 ~~purposes relating to the petitioner.~~

10 ~~(B) Evidence that most of the members of~~
 11 ~~the petitioner consider actions taken by leaders~~
 12 ~~or governing bodies of the petitioner to be of~~
 13 ~~personal importance.~~

14 ~~(C) Evidence that there is widespread~~
 15 ~~knowledge, communication, and involvement in~~
 16 ~~political processes of the petitioner by a major-~~
 17 ~~ity of the members of the petitioner.~~

18 ~~(D) Evidence that the petitioner meets the~~
 19 ~~requirement of subsection (c)(1) at more than~~
 20 ~~a minimal level.~~

21 ~~(E) A demonstration by the petitioner that~~
 22 ~~there are conflicts within the membership that~~
 23 ~~demonstrate controversy over valued goals,~~
 24 ~~properties, policies, processes, or decisions of~~
 25 ~~the petitioner.~~

(F) A demonstration or description by the petitioner of—

(i) a continuous line of leaders of the petitioner; and

(ii) the means by which a majority of the members of the petitioner selected, or approved the selection of, those leaders.

(3) EVIDENCE OF EXERCISE OF POLITICAL INFLUENCE OR AUTHORITY.—The Assistant Secretary shall consider a petitioner to have provided sufficient evidence to demonstrate the exercise of political influence or authority if the petitioner demonstrates that decisions by leaders of the petitioner (or decisions made through another decisionmaking process) have been made throughout the historical period with respect to—

(A) the allocation of group resources such as land, residence rights, or similar resources on a consistent basis;

(B) the settlement on a regular basis, by mediation or other means, of disputes between members or subgroups of members of the petitioner (such as clans or lineages);

(C) the exertion of strong influence on the behavior of individual members of the peti-

tioner, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior; or

(D) the organization or influencing of economic subsistence activities among the members of the petitioner, including shared or cooperative labor.

(e) GOVERNING DOCUMENT.—

(1) IN GENERAL.—A petition described in subsection (a) shall include a copy of the governing document of the petitioner in effect as of the date of submission of the petition that includes a description of the membership criteria of the petitioner.

(2) ALTERNATIVE STATEMENT.—If no written governing document described in paragraph (1) exists, a petitioner shall include with a petition described in subsection (a) a detailed statement that describes—

(A) the membership criteria of the petitioner; and

(B) the governing procedures of the petitioner in effect as of the date of submission of the petition.

(f) LIST OF MEMBERS.—

1 ~~(1) IN GENERAL.~~—A petition described in sub-
 2 section (a) shall include—

3 ~~(A)~~ a list of all members of the petitioner
 4 as of the date of submission of the petition that
 5 includes for each member—

6 ~~(i)~~ a full name (and maiden name, if
 7 any);

8 ~~(ii)~~ a date and place of birth; and

9 ~~(iii)~~ a current residential address;

10 ~~(B)~~ a copy of each available former list of
 11 members of the petitioner; and

12 ~~(C)~~ a statement describing the methods
 13 used in preparing those lists.

14 ~~(2) REQUIREMENTS FOR MEMBERSHIP.~~—In de-
 15 termining whether to consider the members of a pe-
 16 titioner to be members of an Indian group for the
 17 purpose of a petition described in subparagraph (A),
 18 the Assistant Secretary shall require that the mem-
 19 bership consist of descendants of—

20 ~~(A)~~ an Indian group that existed during
 21 the historical period; or

22 ~~(B)~~ 1 or more Indian groups that, at any
 23 time during the historical period, combined and
 24 functioned as a single autonomous entity.

1 ~~(3)~~ EVIDENCE OF TRIBAL MEMBERSHIP.—In
 2 making the determination under paragraph ~~(2)~~, the
 3 Assistant Secretary may use as evidence 1 or more
 4 of the following:

5 (A) Tribal rolls prepared by the Secretary
 6 for the petitioner for the purpose of distributing
 7 claims money or providing allotments, or for
 8 other any other purpose.

9 (B) Any Federal, State, or other official
 10 record or evidence identifying members of the
 11 petitioner as of the date of submission of the
 12 petition, or ancestors of those members, as
 13 being descendants of an Indian group described
 14 in subparagraph (A) or (B) of paragraph ~~(2)~~.

15 (C) Any church, school, or other similar
 16 enrollment record identifying members of the
 17 petitioner as of the date of submission of the
 18 petition, or ancestors of those members, as
 19 being descendants of an Indian group described
 20 in subparagraph (A) or (B) of paragraph ~~(2)~~.

21 (D) An affidavit of recognition by tribal el-
 22 ders, tribal leaders, or a tribal governing body
 23 identifying members of the petitioner as of the
 24 date of submission of the petition, or ancestors
 25 of those members, as being descendants of an

1 Indian group described in subparagraph (A) or
 2 (B) of paragraph (2).

3 ~~(E)~~ Any other record or evidence based on
 4 firsthand experience of a historian, anthropolo-
 5 gist, or genealogist with established expertise on
 6 the petitioner or Indian entities in general,
 7 identifying members of the petitioner as of the
 8 date of submission of the petition, or ancestors
 9 of those members, as being descendants of an
 10 Indian group described in subparagraph (A) or
 11 (B) of paragraph (2).

12 ~~(g)~~ EXCEPTIONS.—

13 ~~(1)~~ IN GENERAL.—An Indian group described
 14 in paragraph (2) shall be required to provide evi-
 15 dence for a petition for acknowledgment submitted
 16 under this section only with respect to the period—

17 ~~(A)~~ beginning on the date on which the
 18 Department first notifies the Indian group that
 19 the Indian group is not eligible for Federal
 20 services or programs because of a lack of status
 21 as an Indian tribe; and

22 ~~(B)~~ ending on the date of submission of
 23 the petition.

24 ~~(2)~~ INDIAN GROUP.—An Indian group referred
 25 to in this paragraph is an Indian group that dem-

onstrates by a reasonable likelihood of the validity of the evidence that the Indian group was, or is a successor in interest to—

(A) a party to 1 or more treaties;

(B) a group acknowledged by any agency of the Federal Government as eligible to participate in a project or activity under the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 461 et seq.);

(C) a group—

(i) for the benefit of which the United States took land into trust; or

(ii) that has been treated by the Federal Government as having collective rights in tribal land or funds; or

(D) a group that has been designated as an Indian tribe by an Act of Congress or Executive order.

SEC. 6. ADDITIONAL RESOURCES.

(a) INDEPENDENT REVIEW AND ADVISORY BOARD.—

(1) IN GENERAL.—The Assistant Secretary shall establish the Independent Review and Advisory Board—

(A) to assist the Assistant Secretary in addressing unique evidentiary questions relating to the acknowledgment process;

(B) to provide secondary peer review of acknowledgment determinations by the Assistant Secretary; and

(C) to enhance the credibility of the acknowledgment process as perceived by Congress, petitioners, interested parties, and the public.

(2) NUMBER AND QUALIFICATIONS.—

(A) IN GENERAL.—The Board shall be composed of 9 individuals appointed by the Assistant Secretary, of whom—

(i) at least 3 individuals shall have a doctoral degree in anthropology;

(ii) at least 3 individuals shall have a doctoral degree in genealogy;

(iii) at least 2 individuals shall have a doctor of jurisprudence degree; and

(iv) at least 1 individual shall be qualified as a historian, as determined by the Assistant Secretary.

(B) PREFERENCE.—In making appointments under subparagraph (A), the Assistant

Secretary shall give preference to individuals having an academic background or professional experience in Federal Indian policy or American Indian history.

(C) CONFLICTS OF INTEREST.—No member of the Board shall, at the time of appointment or during the 1-year period preceding the date of appointment, have represented, or conducted research for, any Indian group or interested party with respect to a petition for acknowledgment filed, or intended to be filed, with the Assistant Secretary.

(D) STATUS AS EMPLOYEES.—A member of the Board shall not be considered to be an employee of the Department.

(3) TENURE; REIMBURSEMENT.—

(A) TENURE.—A member of the Board—

(i) shall be appointed for an initial term of 2 years; and

(ii) may be reappointed for such additional terms as the Assistant Secretary determines to be appropriate.

(B) REIMBURSEMENT.—A member of the Board shall be reimbursed for reasonable expenses incurred in assisting the Assistant Sec-

retary under this section, in accordance with Department policy regarding reimbursement of expenses for individuals serving as advisory board or committee members.

(4) REVIEW AND ADVICE.—

(A) BEFORE ISSUANCE OF PROPOSED FINDINGS.—At any time before the date of issuance of proposed findings under section 4(d)(1)(B) with respect to a petition for acknowledgment under review by the Assistant Secretary, the Assistant Secretary may request an opinion from the Board with respect to the petition if the Assistant Secretary determines that—

(i) the petition contains 1 or more evidentiary submissions that raise unique issues or matters of first impression relating to 1 or more requirements described in section 5; or

(ii) the Assistant Secretary is unable to determine the sufficiency of evidence for 1 or more of those requirements.

(B) AFTER ISSUANCE OF PROPOSED FINDINGS.—After issuance by the Assistant Secretary of proposed findings under section

1 4(d)(1)(B), but before issuance of the final de-
 2 termination, with respect to a petition, the As-
 3 sistant Secretary shall request a review by the
 4 Board of the proposed findings.

5 (C) LEVEL OF REVIEW.—

6 (i) IN GENERAL.—The Board shall
 7 conduct a review requested under subpara-
 8 graph (B) to determine whether an evi-
 9 dentiary question or deficiency exists with
 10 respect to 1 or more requirements relating
 11 to a petition.

12 (ii) LIMITATION BY ASSISTANT SEC-
 13 RETARY OF SCOPE OF REVIEW.—In re-
 14 questing a review under subparagraph (B),
 15 the Assistant Secretary may restrict the
 16 scope of the review to address fewer than
 17 all matters with respect to a petition.

18 (iii) LIMITATION BY BOARD OF SCOPE
 19 OF REVIEW.—In carrying out a review
 20 under subparagraph (B), the Board, in ac-
 21 cordance with all applicable professional
 22 standards of the members of the Board,
 23 may—

24 (I) confine the review to—

1 (aa) the evidence submitted;

2 or

3 (bb) the proposed findings

4 issued under section 4(d)(1)(B);

5 (II) extend the review to the evi-

6 dence submitted by petitioners and in-

7 terested parties;

8 (III) request that the Assistant

9 Secretary request additional submis-

10 sions by petitioners or interested par-

11 ties; and

12 (IV) recommend that the Assist-

13 ant Secretary hold a formal or infor-

14 mal administrative proceeding at

15 which the Board may present ques-

16 tions to, and seek additional informa-

17 tion from, petitioners and interested

18 parties.

19 (b) ASSISTANCE TO PETITIONERS AND INTERESTED

20 PARTIES.—

21 (1) GRANTS.—

22 (A) IN GENERAL.—Subject to paragraph

23 (2), the Assistant Secretary may provide to a

24 petitioner or interested party a grant to offset

25 costs incurred in submitting—

1 (i) a petition (including related evi-
2 dence or documents); or

3 (ii) a legal argument in support of or
4 in opposition to a petition.

5 (B) LIMITATION.—In making grants under
6 subparagraph (A), the Assistant Secretary shall
7 ensure that not less than 50 percent of the
8 amounts made available for the grants are re-
9 served for petitioners.

10 (2) ELIGIBILITY.—The Assistant Secretary
11 shall provide a grant under paragraph (1) based on
12 a demonstration of need of a petitioner or an inter-
13 ested party that is evaluated using such objective
14 criteria as the Secretary may promulgate by regula-
15 tion.

16 (3) OTHER ASSISTANCE.—A grant made to an
17 Indian group under paragraph (1) shall be in addi-
18 tion to any other assistance received by the Indian
19 group under any other provision of law.

20 (4) AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated to carry out
22 this subsection such sums as are necessary for each
23 of fiscal years 2004 through 2014.

24 (c) FEDERAL ACKNOWLEDGMENT RESEARCH PILOT
25 PROJECT.—

1 (1) ESTABLISHMENT.—The Assistant Secretary
 2 shall establish a Federal acknowledgment research
 3 pilot project to make available additional research
 4 resources for researching, reviewing, and analyzing
 5 petitions for acknowledgment received by the Assist-
 6 ant Secretary.

7 (2) COMPOSITION.—

8 (A) IN GENERAL.—The Assistant Sec-
 9 retary, in consultation with the Secretary of the
 10 Smithsonian Institution, shall identify a variety
 11 of independent research institutions that have
 12 the academic and research facilities capable of
 13 assisting in the review of petitions described in
 14 paragraph (1).

15 (B) PROPOSALS.—The Assistant Secretary
 16 shall—

17 (i) invite each institution identified
 18 under subparagraph (A) to submit to the
 19 Assistant Secretary a proposal for partici-
 20 pation in the pilot project; and

21 (ii) approve not more than 3 pro-
 22 posals submitted under clause (i).

23 (C) GRANTS.—The Assistant Secretary
 24 may provide a grant to each institution the pro-
 25 posal of which is approved under subparagraph

1 (B)(ii) to assist the institution in participating
2 in the pilot project.

3 (3) DUTIES.—Each institution approved to par-
4 ticipate in the pilot project shall assemble and pro-
5 vide a research team that, under the direction of the
6 Assistant Secretary, shall—

7 (A) review submissions described in para-
8 graph (1); and

9 (B) submit to the Assistant Secretary con-
10 clusions and recommendations of the research
11 team that are based on the submissions re-
12 viewed.

13 (4) USE OF CONCLUSIONS.—The Assistant Sec-
14 retary may take into consideration any conclusions
15 and recommendations of a research team in making
16 a determination of acknowledgment under this Act.

17 (5) REPORT.—Not later than 3 years after the
18 date of enactment of this Act, the Assistant Sec-
19 retary shall submit to Congress a report that de-
20 scribes the effectiveness of the pilot project.

21 (6) AUTHORIZATION OF APPROPRIATIONS.—
22 There is authorized to be appropriated to carry out
23 this subsection \$3,000,000 for each of fiscal years
24 2004 through 2006.

1 **SEC. 7. INAPPLICABILITY OF FOIA.**

2 (a) ~~IN GENERAL.~~—Section 552 of title 5, United
3 States Code (commonly known as the “Freedom of Infor-
4 mation Act”), shall not apply to any action of the Assist-
5 ant Secretary with respect to a petition for acknowledg-
6 ment under this Act, and the Assistant Secretary shall
7 have no obligation to provide all or any portion of a peti-
8 tion, or to provide information regarding the contents of
9 a petition, to any person or entity, until such time as—

10 (1) the petition has been fully documented; and

11 (2) the Assistant Secretary has published a no-
12 tice in accordance with section 4(c)(1)(A).

13 (b) ~~EXCEPTION.~~—The restriction under subsection
14 (a) on the provision of information contained in or relating
15 to a petition shall not apply to any formal or informal
16 request made or subpoena issued by a law enforcement
17 agency of the United States.

18 (c) ~~ASSISTANCE FROM ATTORNEY GENERAL.~~—

19 (1) ~~IN GENERAL.~~—The Secretary may request
20 assistance from the Attorney General in responding
21 to requests for information relating to a petition
22 made in accordance with section 552 of title 5,
23 United States Code.

24 (2) ~~AUTHORIZATION OF APPROPRIATIONS.~~—

25 There is authorized to be appropriated to the Attor-
26 ney General to provide assistance requested under

1 this subsection \$1,000,000 for each of fiscal years
2 2004 through 2008.

3 **SEC. 8. EFFECT AND IMPLEMENTATION OF DECISIONS.**

4 (a) **IN GENERAL.**—The acknowledgment of any peti-
5 tioner under this Act shall not reduce or eliminate—

6 (1) the right of any other Indian tribe to govern
7 the reservation of that other tribe (as the reservation
8 exists before, on, or after the date of acknowledg-
9 ment of the petitioner);

10 (2) any property right held in trust or recog-
11 nized by the United States for the other Indian tribe
12 (as that property right existed before the date of ac-
13 knowledge of the petitioner); or

14 (3) any previously or independently existing
15 claim by a petitioner to any property right described
16 in paragraph (2) held in trust by the United States
17 for the other Indian tribe before the date of ac-
18 knowledge of the petitioner.

19 (b) **ELIGIBILITY FOR SERVICES AND BENEFITS.**—

20 (1) **IN GENERAL.**—Subject to paragraph (2), on
21 acknowledgment by the Assistant Secretary of a pe-
22 titioner under this Act, the newly-acknowledged In-
23 dian tribe shall—

24 (A) have a government-to-government rela-
25 tionship with the United States;

(B) be eligible for the programs and services provided by the United States to members of other Indian tribes because of the status of those members as Indians; and

(C) have the responsibilities, obligations, privileges, and immunities of those other Indian tribes.

(2) PROGRAMS OF THE BUREAU.—

(A) IN GENERAL.—The acknowledgment by the Assistant Secretary of an Indian group under this Act shall not establish any immediate entitlement to participation in any program of the Bureau in existence as of the date of acknowledgment.

(B) AVAILABILITY OF PROGRAMS.—

(i) IN GENERAL.—Participation in a program described in subparagraph (A) shall be available to an Indian tribe described in paragraph (1) at such time as funds are made available for that purpose.

(ii) REQUESTS FOR APPROPRIATIONS.—The Secretary and the Secretary of Health and Human Services shall submit budget requests for funding for increased participation in a program de-

1 scribed in subparagraph (A) in accordance
2 with subsection (c).

3 (c) NEEDS DETERMINATION AND BUDGET RE-
4 QUEST.—

5 (1) IN GENERAL.—Not later than 180 days
6 after a petitioner is acknowledged under this Act,
7 the appropriate officials of the Bureau and the In-
8 dian Health Service of the Department of Health
9 and Human Services shall consult with the newly-ac-
10 knowledge Indian tribe concerning, develop in co-
11 operation with the newly-acknowledged Indian tribe,
12 and forward to the Secretary or the Secretary of
13 Health and Human Services, as appropriate—

14 (A) a determination of the needs of the In-
15 dian tribe; and

16 (B) a recommended budget required to
17 serve the Indian tribe.

18 (2) SUBMISSION OF BUDGET REQUEST.—For
19 each fiscal year, the Secretary or the Secretary of
20 Health and Human Services, as appropriate, shall
21 submit to the President a recommended budget for
22 programs and services provided by the United States
23 to members of Indian tribes because of the status of
24 those members as Indians (including funding rec-
25 ommendations for newly-acknowledged Indian tribes

1 based on the information received under paragraph
 2 (1)) for inclusion in the annual budget submitted by
 3 the President to Congress in accordance with section
 4 1108 of title 31, United States Code.

5 **SEC. 9. REGULATIONS.**

6 The Secretary may—

7 (1) promulgate such regulations as are nec-
 8 essary to carry out this Act; and

9 (2) maintain in effect all regulations contained
 10 in part 83 of title 25, Code of Federal Regulations
 11 (or any successor regulations); that are not incon-
 12 sistent with this Act.

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Federal Acknowledgment*
 15 *Process Reform Act of 2004”.*

16 **SEC. 2. FINDINGS AND PURPOSES.**

17 (a) *FINDINGS.*—*Congress finds that—*

18 (1) *Indian tribes were sovereign governmental*
 19 *entities before the establishment of the United States;*

20 (2) *the United States has entered into and rati-*
 21 *fied treaties with many Indian tribes for the purpose*
 22 *of establishing government-to-government relation-*
 23 *ships between the United States and the Indian*
 24 *tribes;*

1 (3) *Federal court decisions have recognized the*
 2 *constitutional power of Congress to establish govern-*
 3 *ment-to-government relationships with Indian tribes;*

4 (4) *in 1970, President Nixon ended the termi-*
 5 *nation policy and inaugurated the policy of Indian*
 6 *self-determination;*

7 (5) *in 1978—*

8 (A) *the Secretary of the Interior delegated*
 9 *authority to the Assistant Secretary for Indian*
 10 *Affairs to establish a formal administrative proc-*
 11 *ess by which the United States acknowledges an*
 12 *Indian tribe; and*

13 (B) *the Bureau of Indian Affairs established*
 14 *the Branch of Acknowledgment and Research to*
 15 *carry out the Federal administrative acknowl-*
 16 *edgment process; and*

17 (6) *the Federal administrative acknowledgment*
 18 *process was intended to provide the Assistant Sec-*
 19 *retary with an informed and well-researched basis for*
 20 *making any decision to acknowledge an Indian tribe.*

21 (b) *PURPOSES.—The purposes of this Act are—*

22 (1) *to ensure that, in any case in which the*
 23 *United States acknowledges an Indian tribe by ad-*
 24 *ministrative process, it does so with a consistent legal,*
 25 *factual, and historical basis;*

1 (2) *to provide clear and consistent standards to*
 2 *review documented petitions for acknowledgment by*
 3 *administrative process; and*

4 (3) *to clarify evidentiary standards and expedite*
 5 *the administrative review process for petitions by—*

6 (A) *establishing deadlines for decisions; and*

7 (B) *providing adequate resources to process*
 8 *petitions.*

9 **SEC. 3. DEFINITIONS.**

10 *In this Act:*

11 (1) **ACKNOWLEDGMENT.**—*The term “acknowledg-*
 12 *ment”, with respect to a determination by the Assist-*
 13 *ant Secretary, means acknowledgment by the United*
 14 *States that—*

15 (A) *an Indian group is an Indian tribe*
 16 *having a government-to-government relationship*
 17 *with the United States; and*

18 (B) *the members of the Indian group are el-*
 19 *igible for the programs and services provided by*
 20 *the United States to members of Indian tribes*
 21 *because of the status of those members as Indi-*
 22 *ans.*

23 (2) **ASSISTANT SECRETARY.**—*The term “Assist-*
 24 *ant Secretary” means the Assistant Secretary for In-*
 25 *dian Affairs of the Department.*

1 (3) *AUTONOMOUS.*—*The term “autonomous”,*
 2 *with respect to an Indian group and in the context*
 3 *of the history, geography, culture, and social organi-*
 4 *zation of the Indian group, means an Indian group*
 5 *that exercises the political influence or authority of*
 6 *the Indian group independently of the control of any*
 7 *other Indian group.*

8 (4) *BOARD.*—*The term “Board” means the Inde-*
 9 *pendent Review and Advisory Board established*
 10 *under section 6(a).*

11 (5) *BUREAU.*—*The term “Bureau” means the*
 12 *Bureau of Indian Affairs.*

13 (6) *COMMUNITY.*—*The term “community” means*
 14 *any group of people living within a particular area*
 15 *that, in the context of the history, culture, and social*
 16 *organization of the group, and taking into account*
 17 *the geography of the region in which the group is lo-*
 18 *cated, is able to demonstrate that—*

19 (A) *consistent interactions and significant*
 20 *social relationships exist within the membership;*
 21 *and*

22 (B) *the members of the group are differen-*
 23 *tiated from and identified as distinct from non-*
 24 *members.*

1 (7) *CONTINUOUS*.—*With respect to the history of*
 2 *a group, the term “continuous” means the period be-*
 3 *ginning with calendar year 1900 and continuing to*
 4 *the present time substantially without interruption.*

5 (8) *DEPARTMENT*.—*The term “Department”*
 6 *means the Department of the Interior.*

7 (9) *DOCUMENTED PETITION*.—*The term “docu-*
 8 *mented petition” means a petition for acknowledg-*
 9 *ment consisting of a detailed, factual exposition and*
 10 *arguments, and related documentary evidence, that*
 11 *specifically address requirements for acknowledgment*
 12 *established by the Assistant Secretary under section*
 13 *4(b).*

14 (10) *HISTORICAL PERIOD*.—*The term “historical*
 15 *period” means the period beginning with 1900 and*
 16 *continuing through the date of submission of a peti-*
 17 *tion for acknowledgment under this Act.*

18 (11) *HISTORY*.—*The term “history”, with respect*
 19 *to an Indian group or Indian tribe, means the exist-*
 20 *ence of the Indian group or Indian tribe during the*
 21 *historical period.*

22 (12) *INDEPENDENT RESEARCH INSTITUTION*.—
 23 *The term “independent research institution” means*
 24 *an academic or museum institution that—*

1 (A) employs significant resources toward
 2 the study of anthropology and other human
 3 sciences that are commonly used in reviewing pe-
 4 titions for acknowledgment; and

5 (B) could readily detail those resources to
 6 assist the Assistant Secretary in reviewing those
 7 petitions.

8 (13) INDIAN GROUP.—The term “Indian group”
 9 means any Indian band, pueblo, village, or commu-
 10 nity in a State (excluding Hawaii) that is not ac-
 11 knowledgeed.

12 (14) INDIAN TRIBE.—The term “Indian tribe”
 13 has the meaning given the term in section 4 of the In-
 14 dian Self-Determination and Education Assistance
 15 Act (25 U.S.C. 450b).

16 (15) INTERESTED PARTY.—

17 (A) IN GENERAL.—The term “interested
 18 party” means any person, organization, or other
 19 entity that—

20 (i) establishes a legal, factual, or prop-
 21 erty interest in a determination of acknowl-
 22 edgment; and

23 (ii) requests an opportunity to submit
 24 comments or evidence, or to be kept in-

1 *formed of general actions, regarding a spe-*
 2 *cific petition.*

3 (B) *INCLUSIONS.*—*The term “interested*
 4 *party” includes—*

5 *(i) the Governor of any State;*

6 *(ii) the Attorney General of any State;*

7 *(iii) any unit of local government; and*

8 *(iv) any Indian tribe, or Indian group,*

9 *that may be directly affected by a deter-*
 10 *mination of acknowledgment.*

11 (16) *LETTER OF INTENT.*—*The term “letter of*
 12 *intent” means an undocumented letter or resolution*
 13 *that—*

14 *(A) indicates the intent of an Indian group*
 15 *to submit a documented petition for Federal ac-*
 16 *knowledge;*

17 *(B) is dated and signed by the governing*
 18 *body of the Indian group; and*

19 *(C) is submitted to the Department.*

20 (17) *PETITIONER.*—*The term “petitioner” means*
 21 *any Indian group that submits a letter of intent to*
 22 *the Assistant Secretary.*

23 (18) *PILOT PROJECT.*—*The term “pilot project”*
 24 *means the Federal acknowledgment research pilot*
 25 *project established under section 6(c).*

1 (19) *POLITICAL INFLUENCE OR AUTHORITY.*—

2 *The term “political influence or authority”, with re-*
 3 *spect to the exercise or maintenance by an Indian*
 4 *group, means the use by the Indian group of a tribal*
 5 *council, leadership, internal process, or other mecha-*
 6 *nism, in the context of the history, culture, and social*
 7 *organization of the Indian group, as a means of—*

8 *(A) influencing or controlling the behavior*
 9 *of members of the Indian group in a significant*
 10 *manner;*

11 *(B) making decisions for the Indian group*
 12 *that substantially affect members of the Indian*
 13 *group; or*

14 *(C) representing the Indian group in deal-*
 15 *ing with nonmembers in matters of consequence*
 16 *to the Indian group.*

17 (20) *SECRETARY.*—*The term “Secretary” means*
 18 *the Secretary of the Interior.*

19 (21) *TREATY.*—*The term “treaty” means any*
 20 *treaty—*

21 *(A) negotiated and ratified by the United*
 22 *States on or before March 3, 1871, with, or on*
 23 *behalf of, any Indian group or Indian tribe;*

24 *(B) made by any government with, or on*
 25 *behalf of, any Indian group or Indian tribe, as*

1 *a result of which the Federal Government or the*
 2 *colonial government that was the predecessor to*
 3 *the Federal Government subsequently acquired*
 4 *territory by purchase, conquest, annexation, or*
 5 *cession; or*

6 *(C) negotiated by the United States with, or*
 7 *on behalf of, any Indian group in California, re-*
 8 *gardless of whether the treaty was subsequently*
 9 *ratified.*

10 (22) *TRIBAL ROLL.*—*The term “tribal roll”*
 11 *means a list exclusively of individuals who—*

12 *(A)(i) have been determined by an Indian*
 13 *tribe to meet the membership requirements of the*
 14 *Indian tribe, as described in the governing docu-*
 15 *ment of the Indian tribe; or*

16 *(ii) in the absence of a governing document*
 17 *that describes those requirements, have been rec-*
 18 *ognized as members of the Indian tribe by the*
 19 *governing body of the Indian tribe; and*

20 *(B) have affirmatively demonstrated consent*
 21 *to being listed as members of the Indian tribe.*

22 **SEC. 4. ACKNOWLEDGMENT PROCESS.**

23 (a) *LETTER OF INTENT.*—

24 (1) *IN GENERAL.*—*An Indian group that desires*
 25 *to initiate with the Department a petition for ac-*

1 *knowledge shall submit to the Assistant Secretary*
 2 *a letter of intent that provides to the Assistant Sec-*
 3 *retary relevant information concerning the Indian*
 4 *group that may be used to provide notice to interested*
 5 *parties.*

6 (2) *CONTENTS.—The Indian group shall include*
 7 *in the letter of intent, to the maximum extent prac-*
 8 *ticable—*

9 (A) *the current name of the Indian group*
 10 *and any name by which the Indian group may*
 11 *have been identified throughout the history of the*
 12 *Indian group;*

13 (B) *the 1 or more names of the governing*
 14 *body of the Indian group;*

15 (C) *the current address of the governing*
 16 *body of the Indian group; and*

17 (D) *a brief narrative of the history of the*
 18 *Indian group describing—*

19 (i) *the geographic areas in which the*
 20 *Indian group may have been located during*
 21 *that history; and*

22 (ii) *any relationships of the Indian*
 23 *group with other Indian tribes or Indian*
 24 *groups.*

1 (3) *NOTICE.*—Not later than 90 days after the
 2 date of receipt of a letter of intent from an Indian
 3 group, the Assistant Secretary shall notify the Indian
 4 group and interested parties whether the letter of in-
 5 tent reasonably identifies the Indian group.

6 (b) *REQUIREMENTS FOR PETITIONS.*—

7 (1) *EVIDENCE.*—

8 (A) *IN GENERAL.*—Except as provided in
 9 paragraph (2), on or after filing a letter of in-
 10 tent, an Indian group that seeks acknowledgment
 11 shall submit to the Assistant Secretary a petition
 12 accompanied by evidence that demonstrates the
 13 existence of the Indian group during the histor-
 14 ical period.

15 (B) *EVIDENCE RELATING TO HISTORICAL*
 16 *EXISTENCE.*—To establish the existence of an In-
 17 dian group during the historical period, a peti-
 18 tion shall include evidence that demonstrates
 19 with reasonable likelihood that each factor de-
 20 scribed in section 5 with respect to the petition
 21 has been achieved by the petitioner.

22 (C) *ACCESS TO LIBRARY OF CONGRESS AND*
 23 *NATIONAL ARCHIVES.*—On request by a peti-
 24 tioner, the appropriate officials of the Library of
 25 Congress and the National Archives shall permit

1 access by the petitioner to the resources, records,
2 and documents relating to the petitioner for the
3 purposes of conducting research and preparing
4 evidence concerning the status of the petitioner.

5 (2) *INELIGIBLE GROUPS AND ENTITIES.*—The
6 following groups and entities shall not be eligible to
7 submit to the Assistant Secretary a petition for ac-
8 knowledge under this Act:

9 (A) Any Indian tribe, organized band,
10 pueblo, community, or Alaska Native entity that,
11 as of the date of enactment of this Act, is ac-
12 knowledge.

13 (B) Any Indian group, political faction, or
14 community that separates from the main popu-
15 lation of an Indian tribe, unless the Indian
16 group, faction, or community establishes to the
17 satisfaction of the Assistant Secretary that the
18 Indian group, political faction, or community
19 has functioned as an autonomous Indian group
20 throughout the historical period.

21 (C) Any Indian group, or successor in in-
22 terest of an Indian group (other than an Indian
23 tribe, organized band, pueblo, community, or
24 Alaska native entity described in subparagraph
25 (A)), that, before the date of enactment of this

1 *Act, in accordance with regulations promulgated*
 2 *by the Secretary, petitioned for, and was denied*
 3 *or refused, acknowledgment based on the merits*
 4 *of the petition (except that nothing in this sub-*
 5 *paragraph excludes any group that Congress has*
 6 *identified as an Indian group but has not iden-*
 7 *tified as an Indian tribe).*

8 *(D) Any Indian group the relationship of*
 9 *which with the Federal Government was ex-*
 10 *pressly terminated by an Act of Congress.*

11 *(c) NOTICE OF RECEIPT OF A PETITION; SCHEDULE.—*

12 *(1) PUBLICATION.—*

13 *(A) IN GENERAL.—Not later than 30 days*
 14 *after the date on which the Assistant Secretary*
 15 *receives a documented petition under subsection*
 16 *(b), the Assistant Secretary shall publish in the*
 17 *Federal Register a notice of receipt of the peti-*
 18 *tion.*

19 *(B) INCLUSIONS.—The notice shall in-*
 20 *clude—*

21 *(i) the name and location of the peti-*
 22 *tioner;*

23 *(ii) such other information as the As-*
 24 *stant Secretary determines will identify*
 25 *the petitioner;*

1 (iii) the date of receipt of the petition;

2 (iv) information describing 1 or more
3 locations at which a copy of the petition
4 and related submissions may be examined
5 by the public; and

6 (v) a description of the procedure by
7 which an interested party may submit—

8 (I) evidence in support of or in
9 opposition to the request of the peti-
10 tioner for acknowledgment; or

11 (II) a request to be kept informed
12 of all actions affecting the petition.

13 (2) *SCHEDULE*.—Not later than 60 days after
14 the date of publication of a notice under paragraph
15 (1)(A), the Assistant Secretary, in consultation with
16 the petitioner and interested parties, shall establish
17 a schedule for—

18 (A) the submission of evidence and argu-
19 ments relating to the petition; and

20 (B) the publication of proposed findings of
21 the Assistant Secretary with respect to the peti-
22 tion.

23 (d) *REVIEW OF PETITIONS*.—

24 (1) *IN GENERAL*.—Not later than 360 days after
25 receipt of a documented petition, the Assistant Sec-

1 *retary, in accordance with the schedule established*
 2 *under subsection (c)(2), shall—*

3 *(A) conduct a review to determine whether*
 4 *the petitioner is entitled to acknowledgment; and*

5 *(B) publish in the Federal Register the pro-*
 6 *posed findings of the Assistant Secretary with re-*
 7 *spect to that determination.*

8 *(2) EXTENSION.—For good cause, the Assistant*
 9 *Secretary may extend the publication date for a pe-*
 10 *riod of not more than 180 days.*

11 *(3) CONTENT OF REVIEW.—The review conducted*
 12 *under paragraph (1) shall include consideration of—*

13 *(A) the petition;*

14 *(B) any supporting evidence;*

15 *(C) any factual statements contained in the*
 16 *petition relating to other submissions, including*
 17 *oral accounts of the history of the petitioner sub-*
 18 *mitted by the petitioner; and*

19 *(D) submissions of interested parties sub-*
 20 *mitted under subsection (c)(1)(B)(v) and within*
 21 *the schedule established under subsection (c)(2).*

22 *(4) CONSIDERATION OF EVIDENCE.—Evidence re-*
 23 *ceived from interested parties under subsection*
 24 *(c)(1)(B)(v)(I) shall be—*

1 (A) considered by the Assistant Secretary;

2 and

3 (B) noted in any proposed findings or final
4 determination regarding a petition.

5 (5) *OTHER RESEARCH.*—In conducting a review
6 under this subsection, the Assistant Secretary may—

7 (A) initiate other research for any purpose
8 relating to—

9 (i) analysis of the petition; or

10 (ii) the acquisition of additional infor-
11 mation concerning the status of the peti-
12 tioner;

13 (B) initiate research through the pilot
14 project or the Board; and

15 (C) consider evidence submitted by inter-
16 ested parties, including oral accounts of the his-
17 tory of the petitioner submitted by other Indian
18 tribes.

19 (6) *EXCEPTION FOR LACK OF CERTAIN EVI-*
20 *DENCE.*—If the Assistant Secretary determines that,
21 for any period of time, evidence necessary to carry
22 out this subsection is lacking, the lack of evidence
23 shall not be the basis for a determination of the As-
24 sistant Secretary not to acknowledge a petitioner if

1 *the Assistant Secretary determines that the lack of*
 2 *evidence may be attributed to—*

3 *(A) any applicable official act of the Fed-*
 4 *eral Government or a State government; or*

5 *(B) any applicable unofficial act of an offi-*
 6 *cer or agent of the Federal Government or a*
 7 *State government.*

8 *(e) FINAL DETERMINATION.—*

9 *(1) IN GENERAL.—On review of all evidence sub-*
 10 *mitted under section 5 and this section and the re-*
 11 *sults of research conducted under section 5 and this*
 12 *section by the Assistant Secretary (including through*
 13 *the pilot project or the Board), and after providing*
 14 *a petitioner and interested parties an opportunity to*
 15 *respond to the proposed findings of the Assistant Sec-*
 16 *retary, the Assistant Secretary shall make a final de-*
 17 *termination in writing whether the petitioner is enti-*
 18 *tled to acknowledgment.*

19 *(2) FACTS AND CONCLUSIONS.—A final deter-*
 20 *mination under paragraph (1) shall include all facts*
 21 *and conclusions of law in accordance with which the*
 22 *final determination was made.*

23 *(3) DEADLINE FOR ISSUANCE OF FINAL DETER-*
 24 *MINATION.—A final determination under paragraph*
 25 *(1) shall be made not later than 360 days after publi-*

1 *cation of the proposed findings in the Federal Reg-*
 2 *ister.*

3 (4) *NOTIFICATION OF ACKNOWLEDGMENT.*—*If the*
 4 *Assistant Secretary determines under paragraph (1)*
 5 *that a petitioner is entitled to acknowledgment, the*
 6 *Assistant Secretary shall—*

7 (A) *acknowledge the petitioner;*

8 (B) *notify the petitioner and any interested*
 9 *parties of the final determination to acknowledge*
 10 *the petitioner;*

11 (C) *provide to the petitioner and any inter-*
 12 *ested parties a copy of the final determination;*
 13 *and*

14 (D) *not later than 7 days after notifying*
 15 *the petitioner and any interested parties under*
 16 *subparagraph (B), publish in the Federal Reg-*
 17 *ister a notice of the final determination of ac-*
 18 *knowledge.*

19 (f) *JUDICIAL REVIEW.*—

20 (1) *IN GENERAL.*—*Not later than 60 days after*
 21 *the date of publication of the notice of a final deter-*
 22 *mination described in subsection (e)(3)(D), a peti-*
 23 *tioner may seek judicial review of the final deter-*
 24 *mination by the United States District Court for the*
 25 *District of Columbia.*

1 (2) *STATEMENT OF INTENT.*—

2 (A) *IN GENERAL.*—*It is the intent of Con-*
 3 *gress that, in accordance with Federal law relat-*
 4 *ing to interpretations of treaties and Acts of*
 5 *Congress affecting the rights, powers, privileges,*
 6 *and immunities of Indian tribes, any ambiguity*
 7 *in this Act be liberally construed in favor of an*
 8 *Indian group or Indian tribe.*

9 (B) *APPLICABILITY OF OTHER LAW.*—*Noth-*
 10 *ing in paragraph (1) affects the applicability of*
 11 *chapter 7 of title 5, United States Code (com-*
 12 *monly known as the “Administrative Procedure*
 13 *Act”), or any other rights under any other law.*

14 (g) *AUTHORIZATION OF APPROPRIATIONS.*—*There is*
 15 *authorized to be appropriated to carry out this section*
 16 *\$5,000,000 for each of fiscal years 2004 through 2013.*

17 **SEC. 5. DOCUMENTED PETITIONS.**

18 (a) *FACTORS FOR CONSIDERATION.*—*A petition for ac-*
 19 *knowledgment submitted by an Indian group shall be in*
 20 *any readable form that—*

21 (1) *clearly indicates that the petition is a docu-*
 22 *mented petition requesting acknowledgment of the In-*
 23 *dian group; and*

24 (2) *contains detailed, specific evidence as de-*
 25 *scribed in subsections (b) through (g).*

1 **(b) STATEMENT OF FACTS RELATING TO IDENTITY.—**

2 **(1) IN GENERAL.—***A petition described in sub-*
3 *section (a) shall contain a statement of facts and an*
4 *analysis of those facts establishing that the petitioner*
5 *has been identified as an Indian group in the United*
6 *States on a substantially continuous basis.*

7 **(2) PREVIOUS DENIALS OF STATUS.—***The Assist-*
8 *ant Secretary shall not consider any evidence that the*
9 *status of the petitioner as an Indian group has pre-*
10 *viously been denied to be conclusive evidence that the*
11 *factor described in paragraph (1) has not been met.*

12 **(3) EVIDENCE RELATING TO IDENTITY.—***In de-*
13 *termining the Indian identity of a group, the Assist-*
14 *ant Secretary may use as evidence 1 or more of the*
15 *following:*

16 **(A)** *An identification of the petitioner as an*
17 *Indian entity by any department, agency, or in-*
18 *strumentality of the Federal Government.*

19 **(B)** *A relationship between the petitioner*
20 *and any State government, based on an identi-*
21 *fication of the petitioner by the State as an In-*
22 *dian entity.*

23 **(C)** *Any dealings of the petitioner with a*
24 *county or political subdivision of a State in a*

1 *relationship based on an identification of the pe-*
 2 *tioner as an Indian group.*

3 *(D) An identification of the petitioner as an*
 4 *Indian group by records in a private or public*
 5 *archive, courthouse, church, or school.*

6 *(E) An identification of the petitioner as an*
 7 *Indian group by an anthropologist, historian, or*
 8 *other scholar.*

9 *(F) An identification of the petitioner as an*
 10 *Indian group in a newspaper, book, or similar*
 11 *medium.*

12 *(G) An identification of the petitioner as an*
 13 *Indian group by an Indian tribe or by a na-*
 14 *tional, regional, or State Indian organization.*

15 *(H) An identification of the petitioner as*
 16 *an Indian group by a foreign government or an*
 17 *international organization.*

18 *(I) Such other evidence of identification as*
 19 *may be provided by a person or entity other*
 20 *than the petitioner or a member of the member-*
 21 *ship of the petitioner.*

22 *(c) STATEMENT OF FACTS RELATING TO EVIDENCE OF*
 23 *COMMUNITY.—*

24 *(1) IN GENERAL.—A petition described in sub-*
 25 *section (a) shall include a statement of facts and an*

1 *analysis of those facts establishing that a predomi-*
 2 *nant portion of the membership of the petitioner—*

3 *(A) comprises a community distinct from*
 4 *the communities surrounding that community;*
 5 *and*

6 *(B) has existed as a community throughout*
 7 *the historical period.*

8 *(2) EVIDENCE RELATING TO COMMUNITY.—In de-*
 9 *termining whether the membership of the petitioner*
 10 *meets the requirements of paragraph (1), the Assist-*
 11 *ant Secretary may use as evidence 1 or more of the*
 12 *following:*

13 *(A) Significant rates of marriage within the*
 14 *membership of the petitioner, or, as may be cul-*
 15 *turally required, patterned out-marriages with*
 16 *other Indian populations.*

17 *(B) Significant social relationships con-*
 18 *necting individual members of the petitioner.*

19 *(C) Significant rates of informal social*
 20 *interaction that exist broadly among the mem-*
 21 *bers of the petitioner.*

22 *(D) A significant degree of shared or coop-*
 23 *erative labor or other economic activity among*
 24 *the membership of the petitioner.*

1 (E) *Evidence of strong patterns of discrimi-*
 2 *nation or other social distinctions against mem-*
 3 *bers of the petitioner by nonmembers.*

4 (F) *Shared sacred or secular ritual activity*
 5 *encompassing a majority of members of the peti-*
 6 *tioner.*

7 (G) *Cultural patterns that—*

8 (i) *are shared among a significant por-*
 9 *tion of the members of the petitioner;*

10 (ii) *are different from the cultural pat-*
 11 *terns of the non-Indian populations with*
 12 *whom the membership of the petitioner*
 13 *interacts;*

14 (iii) *function as more than a symbolic*
 15 *identification of the petitioner as Indian;*
 16 *and*

17 (iv) *may include language, kinship, or*
 18 *religious organizations, or religious beliefs*
 19 *and practices.*

20 (H) *The persistence of a named, collective*
 21 *Indian identity during a continuous period of at*
 22 *least 50 years, notwithstanding any change in*
 23 *name.*

24 (I) *A demonstration of historical political*
 25 *influence or authority of the petitioner.*

1 *(J) A demonstration that not less than 50*
 2 *percent of the members of the petitioner exhibit*
 3 *collateral kinship ties through generations to the*
 4 *third degree.*

5 *(3) CRITERIA FOR SUFFICIENT EVIDENCE.—The*
 6 *Assistant Secretary shall consider a petitioner to have*
 7 *provided sufficient evidence of community under this*
 8 *subparagraph if the petitioner has provided to the As-*
 9 *stant Secretary evidence demonstrating that,*
 10 *throughout the historical period—*

11 *(A)(i) more than 50 percent of the members*
 12 *of the petitioner reside in a particular geo-*
 13 *graphical area exclusively, or almost exclusively,*
 14 *composed of members of the group; and*

15 *(ii) the balance of the membership main-*
 16 *tains consistent social interaction with other*
 17 *members of the petitioner;*

18 *(B) not less than $\frac{1}{3}$ of the marriages of the*
 19 *petitioner are between members of the petitioner;*

20 *(C) not less than 50 percent of the members*
 21 *of the petitioner maintain distinct cultural pat-*
 22 *terns, including language, kinship, and religious*
 23 *organizations, or religious beliefs or practices;*

24 *(D) distinct community social institutions*
 25 *(such as kinship organizations, formal or infor-*

mal economic cooperation, and religious organizations) encompass at least 50 percent of the members of the petitioner; or

(E) the petitioner has met the requirement under subsection (d)(1) using evidence described in subsection (d)(2).

(d) STATEMENT OF FACTS RELATING TO AUTONOMOUS NATURE OF PETITIONER.—

(1) IN GENERAL.—A petition described in subsection (a) shall include a statement of facts and an analysis of those facts establishing that the petitioner has maintained political influence or authority over members of the petitioner throughout the historical period.

(2) EVIDENCE RELATING TO AUTONOMOUS NATURE.—In determining whether a petitioner is an autonomous entity under paragraph (1), the Assistant Secretary may use as evidence 1 or more of the following:

(A) A demonstration that the petitioner is capable of mobilizing significant numbers of members and significant member resource for purposes relating to the petitioner.

(B) Evidence that most of the members of the petitioner consider actions taken by leaders

1 or governing bodies of the petitioner to be of per-
2 sonal importance.

3 (C) Evidence that there is widespread
4 knowledge, communication, and involvement in
5 political processes of the petitioner by a majority
6 of the members of the petitioner.

7 (D) Evidence that the petitioner meets the
8 requirement of subsection (c)(1) at more than a
9 minimal level.

10 (E) A demonstration by the petitioner that
11 there are conflicts within the membership that
12 demonstrate controversy over valued goals, prop-
13 erties, policies, processes, or decisions of the peti-
14 tioner.

15 (F) A demonstration or description by the
16 petitioner of—

17 (i) a continuous line of leaders of the
18 petitioner; and

19 (ii) the means by which a majority of
20 the members of the petitioner selected, or
21 approved the selection of, those leaders.

22 (3) EVIDENCE OF EXERCISE OF POLITICAL IN-
23 FLUENCE OR AUTHORITY.—The Assistant Secretary
24 shall consider a petitioner to have provided sufficient
25 evidence to demonstrate the exercise of political influ-

1 *ence or authority if the petitioner demonstrates that*
 2 *decisions by leaders of the petitioner (or decisions*
 3 *made through another decisionmaking process) have*
 4 *been made throughout the historical period with re-*
 5 *spect to—*

6 *(A) the allocation of group resources such as*
 7 *land, residence rights, or similar resources on a*
 8 *consistent basis;*

9 *(B) the settlement on a regular basis, by*
 10 *mediation or other means, of disputes between*
 11 *members or subgroups of members of the peti-*
 12 *tioner (such as clans or lineages);*

13 *(C) the exertion of strong influence on the*
 14 *behavior of individual members of the petitioner,*
 15 *such as the establishment or maintenance of*
 16 *norms and the enforcement of sanctions to direct*
 17 *or control behavior; or*

18 *(D) the organization or influencing of eco-*
 19 *nomics subsistence activities among the members*
 20 *of the petitioner, including shared or cooperative*
 21 *labor.*

22 *(e) GOVERNING DOCUMENT.—*

23 *(1) IN GENERAL.—A petition described in sub-*
 24 *section (a) shall include a copy of the governing docu-*
 25 *ment of the petitioner in effect as of the date of sub-*

mission of the petition that includes a description of the membership criteria of the petitioner.

(2) *ALTERNATIVE STATEMENT.*—If no written governing document described in paragraph (1) exists, a petitioner shall include with a petition described in subsection (a) a detailed statement that describes—

(A) the membership criteria of the petitioner; and

(B) the governing procedures of the petitioner in effect as of the date of submission of the petition.

(f) *LIST OF MEMBERS.*—

(1) *IN GENERAL.*—A petition described in subsection (a) shall include—

(A) a list of all members of the petitioner as of the date of submission of the petition that includes for each member—

(i) a full name (and maiden name, if any);

(ii) a date and place of birth; and

(iii) a current residential address;

(B) a copy of each available former list of members of the petitioner; and

1 (C) a statement describing the methods used
2 in preparing those lists.

3 (2) *REQUIREMENTS FOR MEMBERSHIP.*—In de-
4 termining whether to consider the members of a peti-
5 tioner to be members of an Indian group for the pur-
6 pose of a petition described in subparagraph (A), the
7 Assistant Secretary shall require that the membership
8 consist of descendants of—

9 (A) an Indian group that existed during the
10 historical period; or

11 (B) 1 or more Indian groups that, at any
12 time during the historical period, combined and
13 functioned as a single autonomous entity.

14 (3) *EVIDENCE OF TRIBAL MEMBERSHIP.*—In
15 making the determination under paragraph (2), the
16 Assistant Secretary may use as evidence 1 or more of
17 the following:

18 (A) Tribal rolls prepared by the Secretary
19 for the petitioner for the purpose of distributing
20 claims money or providing allotments, or for
21 other any other purpose.

22 (B) Any Federal, State, or other official
23 record or evidence identifying members of the pe-
24 titioner as of the date of submission of the peti-
25 tion, or ancestors of those members, as being de-

scendants of an Indian group described in subparagraph (A) or (B) of paragraph (2).

(C) Any church, school, or other similar enrollment record identifying members of the petitioner as of the date of submission of the petition, or ancestors of those members, as being descendants of an Indian group described in subparagraph (A) or (B) of paragraph (2).

(D) An affidavit of recognition by tribal elders, tribal leaders, or a tribal governing body identifying members of the petitioner as of the date of submission of the petition, or ancestors of those members, as being descendants of an Indian group described in subparagraph (A) or (B) of paragraph (2).

(E) Any other record or evidence based on firsthand experience of a historian, anthropologist, or genealogist with established expertise on the petitioner or Indian entities in general, identifying members of the petitioner as of the date of submission of the petition, or ancestors of those members, as being descendants of an Indian group described in subparagraph (A) or (B) of paragraph (2).

(g) EXCEPTIONS.—

1 (1) *IN GENERAL.*—*An Indian group described in*
 2 *paragraph (2) shall be required to provide evidence*
 3 *for a petition for acknowledgment submitted under*
 4 *this section only with respect to the period—*

5 *(A) beginning on the date on which the De-*
 6 *partment first notifies the Indian group that the*
 7 *Indian group is not eligible for Federal services*
 8 *or programs because of a lack of status as an In-*
 9 *dian tribe; and*

10 *(B) ending on the date of submission of the*
 11 *petition.*

12 (2) *INDIAN GROUP.*—*An Indian group referred*
 13 *to in this paragraph is an Indian group that dem-*
 14 *onstrates by a reasonable likelihood of the validity of*
 15 *the evidence that the Indian group was, or is a suc-*
 16 *cessor in interest to—*

17 *(A) a party to 1 or more treaties;*

18 *(B) a group acknowledged by any agency of*
 19 *the Federal Government as eligible to participate*
 20 *in a project or activity under the Act of June 18,*
 21 *1934 (commonly known as the “Indian Reorga-*
 22 *nization Act”)* (25 U.S.C. 461 *et seq.*);

23 *(C) a group—*

24 *(i) for the benefit of which the United*
 25 *States took land into trust; or*

1 (ii) that has been treated by the Fed-
 2 eral Government as having collective rights
 3 in tribal land or funds; or

4 (D) a group that has been designated as an
 5 Indian tribe by an Act of Congress or Executive
 6 order.

7 **SEC. 6. ADDITIONAL RESOURCES.**

8 (a) *INDEPENDENT REVIEW AND ADVISORY BOARD.*—

9 (1) *IN GENERAL.*—*The Assistant Secretary shall*
 10 *establish the Independent Review and Advisory*
 11 *Board—*

12 (A) *to assist the Assistant Secretary in ad-*
 13 *ressing unique evidentiary questions relating to*
 14 *the acknowledgment process;*

15 (B) *to provide secondary peer review of ac-*
 16 *knowledgment determinations by the Assistant*
 17 *Secretary; and*

18 (C) *to enhance the credibility of the ac-*
 19 *knowledgment process as perceived by Congress,*
 20 *petitioners, interested parties, and the public.*

21 (2) *NUMBER AND QUALIFICATIONS.*—

22 (A) *IN GENERAL.*—*The Board shall be com-*
 23 *posed of 11 individuals appointed by the Assist-*
 24 *ant Secretary, of whom—*

1 (i) at least 3 individuals shall have a
2 doctoral degree in anthropology;

3 (ii) at least 3 individuals shall have
4 demonstrated expertise in genealogy;

5 (iii) at least 2 individuals shall have a
6 doctor of jurisprudence degree; and

7 (iv) at least 3 individuals shall have a
8 doctoral degree as a historian.

9 (B) PREFERENCE.—In making appoint-
10 ments under subparagraph (A), the Assistant
11 Secretary shall give preference to individuals
12 having an academic background or professional
13 experience in Federal Indian policy or American
14 Indian history.

15 (C) CONFLICTS OF INTEREST.—No member
16 of the Board shall, at the time of appointment
17 or during the 1-year period preceding the date of
18 appointment, have represented, or conducted re-
19 search for, any Indian group or interested party
20 with respect to a petition for acknowledgment
21 filed, or intended to be filed, with the Assistant
22 Secretary.

23 (D) STATUS AS EMPLOYEES.—A member of
24 the Board shall not be considered to be an em-
25 ployee of the Department.

1 (3) *TENURE; REIMBURSEMENT.*—

2 (A) *TENURE.*—*A member of the Board—*

3 (i) *shall be appointed for an initial*
4 *term of 2 years; and*

5 (ii) *may be reappointed for such addi-*
6 *tional terms as the Assistant Secretary de-*
7 *termines to be appropriate.*

8 (B) *REIMBURSEMENT.*—*A member of the*
9 *Board shall be reimbursed for reasonable ex-*
10 *penses incurred in assisting the Assistant Sec-*
11 *retary under this section, in accordance with De-*
12 *partment policy regarding reimbursement of ex-*
13 *penses for individuals serving as advisory board*
14 *or committee members.*

15 (4) *REVIEW AND ADVICE.*—

16 (A) *BEFORE ISSUANCE OF PROPOSED FIND-*
17 *INGS.*—*At any time before the date of issuance of*
18 *proposed findings under section 4(d)(1)(B) with*
19 *respect to a petition for acknowledgment under*
20 *review by the Assistant Secretary, the Assistant*
21 *Secretary may request an opinion from the*
22 *Board with respect to the petition if the Assist-*
23 *ant Secretary determines that—*

24 (i) *the petition contains 1 or more evi-*
25 *dentiary submissions that raise unique*

1 *issues or matters of first impression relating*
 2 *to 1 or more requirements described in sec-*
 3 *tion 5; or*

4 *(ii) the Assistant Secretary is unable*
 5 *to determine the sufficiency of evidence for*
 6 *1 or more of those requirements.*

7 *(B) AFTER ISSUANCE OF PROPOSED FIND-*
 8 *INGS.—After issuance by the Assistant Secretary*
 9 *of proposed findings under section 4(d)(1)(B),*
 10 *but before issuance of the final determination,*
 11 *with respect to a petition, the Assistant Sec-*
 12 *retary shall request a review by the Board of the*
 13 *proposed findings.*

14 *(C) LEVEL OF REVIEW.—*

15 *(i) IN GENERAL.—The Board shall*
 16 *conduct a review requested under subpara-*
 17 *graph (B) to determine whether an evi-*
 18 *dentiary question or deficiency exists with*
 19 *respect to 1 or more criteria relating to a*
 20 *petition.*

21 *(ii) LIMITATION BY ASSISTANT SEC-*
 22 *RETARY OF SCOPE OF REVIEW.—In request-*
 23 *ing a review under subparagraph (B), the*
 24 *Assistant Secretary may restrict the scope of*

1 *the review to address fewer than all matters*
 2 *with respect to a petition.*

3 (iii) *LIMITATION BY BOARD OF SCOPE*
 4 *OF REVIEW.—In carrying out a review*
 5 *under subparagraph (B), the Board, in ac-*
 6 *cordance with all applicable professional*
 7 *standards of the members of the Board,*
 8 *may—*

9 (I) *confine the review to—*

10 (aa) *the evidence submitted;*

11 *or*

12 (bb) *the proposed findings*
 13 *issued under section 4(d)(1)(B);*

14 (II) *extend the review to the evi-*
 15 *dence submitted by petitioners and in-*
 16 *terested parties;*

17 (III) *request that the Assistant*
 18 *Secretary request additional submis-*
 19 *sions by petitioners or interested par-*
 20 *ties; and*

21 (IV) *recommend that the Assistant*
 22 *Secretary hold a formal or informal*
 23 *administrative proceeding at which the*
 24 *Board may present questions to, and*

1 *seek additional information from, peti-*
 2 *tioners and interested parties.*

3 **(b) ASSISTANCE TO PETITIONERS AND INTERESTED**
 4 **PARTIES.—**

5 **(1) GRANTS.—**

6 **(A) IN GENERAL.—***Subject to paragraph*
 7 *(2), the Assistant Secretary may provide to a pe-*
 8 *titioner or interested party a grant to offset costs*
 9 *incurred in submitting—*

10 *(i) a petition (including related evi-*
 11 *dence or documents); or*

12 *(ii) a legal argument in support of or*
 13 *in opposition to a petition.*

14 **(B) LIMITATION.—***In making grants under*
 15 *subparagraph (A), the Assistant Secretary shall*
 16 *ensure that not less than 50 percent of the*
 17 *amounts made available for the grants are re-*
 18 *served for petitioners.*

19 **(2) ELIGIBILITY.—***The Assistant Secretary shall*
 20 *provide a grant under paragraph (1) based on a dem-*
 21 *onstration of need of a petitioner or an interested*
 22 *party that is evaluated using such objective criteria*
 23 *as the Secretary may promulgate by regulation.*

24 **(3) OTHER ASSISTANCE.—***A grant made to an*
 25 *Indian group under paragraph (1) shall be in addi-*

1 *tion to any other assistance received by the Indian*
 2 *group under any other provision of law.*

3 (4) *AUTHORIZATION OF APPROPRIATIONS.—*

4 *There are authorized to be appropriated to carry out*
 5 *this subsection such sums as are necessary for each of*
 6 *fiscal years 2004 through 2014.*

7 (c) *FEDERAL ACKNOWLEDGMENT RESEARCH PILOT*
 8 *PROJECT.—*

9 (1) *ESTABLISHMENT.—The Assistant Secretary*
 10 *shall establish a Federal acknowledgment research*
 11 *pilot project to make available additional research re-*
 12 *sources for researching, reviewing, and analyzing pe-*
 13 *titions for acknowledgment received by the Assistant*
 14 *Secretary.*

15 (2) *COMPOSITION.—*

16 (A) *IN GENERAL.—The Assistant Secretary,*
 17 *in consultation with the Secretary of the Smith-*
 18 *sonian Institution, shall identify a variety of*
 19 *independent research institutions that have the*
 20 *academic and research facilities capable of as-*
 21 *sisting in the review of petitions described in*
 22 *paragraph (1).*

23 (B) *PROPOSALS.—The Assistant Secretary*
 24 *shall—*

1 (i) invite each institution identified
 2 under subparagraph (A) to submit to the
 3 Assistant Secretary a proposal for partici-
 4 pation in the pilot project; and

5 (ii) approve not more than 3 proposals
 6 submitted under clause (i).

7 (C) GRANTS.—The Assistant Secretary may
 8 provide a grant to each institution the proposal
 9 of which is approved under subparagraph (B)(ii)
 10 to assist the institution in participating in the
 11 pilot project.

12 (3) DUTIES.—Each institution approved to par-
 13 ticipate in the pilot project shall assemble and pro-
 14 vide a research team that, under the direction of the
 15 Assistant Secretary, shall—

16 (A) review submissions described in para-
 17 graph (1); and

18 (B) submit to the Assistant Secretary con-
 19 clusions and recommendations of the research
 20 team that are based on the submissions reviewed.

21 (4) USE OF CONCLUSIONS.—The Assistant Sec-
 22 retary may take into consideration any conclusions
 23 and recommendations of a research team in making
 24 a determination of acknowledgment under this Act.

1 (5) *REPORT.*—Not later than 3 years after the
 2 date of enactment of this Act, the Assistant Secretary
 3 shall submit to Congress a report that describes the ef-
 4 fectiveness of the pilot project.

5 (6) *AUTHORIZATION OF APPROPRIATIONS.*—
 6 There is authorized to be appropriated to carry out
 7 this subsection \$3,000,000 for each of fiscal years
 8 2004 through 2006.

9 **SEC. 7. INAPPLICABILITY OF FOIA.**

10 (a) *IN GENERAL.*—Section 552 of title 5, United
 11 States Code (commonly known as the “Freedom of Informa-
 12 tion Act”), shall not apply to any action of the Assistant
 13 Secretary with respect to a petition for acknowledgment
 14 under this Act, and the Assistant Secretary shall have no
 15 obligation to provide all or any portion of a petition, or
 16 to provide information regarding the contents of a petition,
 17 to any person or entity, until such time as—

18 (1) the petition has been fully documented; and
 19 (2) the Assistant Secretary has published a no-
 20 tice in accordance with section 4(c)(1)(A).

21 (b) *EXCEPTION.*—The restriction under subsection (a)
 22 on the provision of information contained in or relating
 23 to a petition shall not apply to any formal or informal re-
 24 quest made or subpoena issued by a law enforcement agency
 25 of the United States.

1 (c) *ASSISTANCE FROM ATTORNEY GENERAL.*—

2 (1) *IN GENERAL.*—*The Secretary may request*
 3 *assistance from the Attorney General in responding to*
 4 *requests for information relating to a petition made*
 5 *in accordance with section 552 of title 5, United*
 6 *States Code.*

7 (2) *AUTHORIZATION OF APPROPRIATIONS.*—
 8 *There is authorized to be appropriated to the Attorney*
 9 *General to provide assistance requested under this*
 10 *subsection \$1,000,000 for each of fiscal years 2004*
 11 *through 2008.*

12 **SEC. 8. EFFECT AND IMPLEMENTATION OF DECISIONS.**

13 (a) *IN GENERAL.*—*The acknowledgment of any peti-*
 14 *tioner under this Act shall not reduce or eliminate—*

15 (1) *the right of any other Indian tribe to govern*
 16 *the reservation of that other tribe (as the reservation*
 17 *exists before, on, or after the date of acknowledgment*
 18 *of the petitioner);*

19 (2) *any property right held in trust or recog-*
 20 *nized by the United States for the other Indian tribe*
 21 *(as that property right existed before the date of ac-*
 22 *knowledgment of the petitioner); or*

23 (3) *any previously or independently existing*
 24 *claim by a petitioner to any property right described*
 25 *in paragraph (2) held in trust by the United States*

1 *for the other Indian tribe before the date of acknowl-*
 2 *edgment of the petitioner.*

3 **(b) ELIGIBILITY FOR SERVICES AND BENEFITS.—**

4 **(1) IN GENERAL.**—*Subject to paragraph (2), on*
 5 *acknowledgment by the Assistant Secretary of a peti-*
 6 *tioner under this Act, the newly-acknowledged Indian*
 7 *tribe shall—*

8 **(A)** *have a government-to-government rela-*
 9 *tionship with the United States;*

10 **(B)** *be eligible for the programs and services*
 11 *provided by the United States to members of*
 12 *other Indian tribes because of the status of those*
 13 *members as Indians; and*

14 **(C)** *have the responsibilities, obligations,*
 15 *privileges, and immunities of those other Indian*
 16 *tribes.*

17 **(2) PROGRAMS OF THE BUREAU.—**

18 **(A) IN GENERAL.**—*The acknowledgment by*
 19 *the Assistant Secretary of an Indian group*
 20 *under this Act shall not establish any immediate*
 21 *entitlement to participation in any program of*
 22 *the Bureau in existence as of the date of ac-*
 23 *knowledgment.*

24 **(B) AVAILABILITY OF PROGRAMS.—**

1 (i) *IN GENERAL.*—*Participation in a*
 2 *program described in subparagraph (A)*
 3 *shall be available to an Indian tribe de-*
 4 *scribed in paragraph (1) at such time as*
 5 *funds are made available for that purpose.*

6 (ii) *REQUESTS FOR APPROPRIA-*
 7 *TIONS.*—*The Secretary and the Secretary of*
 8 *Health and Human Services shall submit*
 9 *budget requests for funding for increased*
 10 *participation in a program described in*
 11 *subparagraph (A) in accordance with sub-*
 12 *section (c).*

13 (c) *NEEDS DETERMINATION AND BUDGET RE-*
 14 *QUEST.*—

15 (1) *IN GENERAL.*—*Not later than 180 days after*
 16 *a petitioner is acknowledged under this Act, the ap-*
 17 *propriate officials of the Bureau and the Indian*
 18 *Health Service of the Department of Health and*
 19 *Human Services shall consult with the newly-ac-*
 20 *knowledgeed Indian tribe concerning, develop in co-*
 21 *operation with the newly-acknowledgeed Indian tribe,*
 22 *and forward to the Secretary or the Secretary of*
 23 *Health and Human Services, as appropriate—*

24 (A) *a determination of the needs of the In-*
 25 *dian tribe; and*

1 (B) a recommended budget required to serve
2 the Indian tribe.

3 (2) *SUBMISSION OF BUDGET REQUEST.*—For
4 each fiscal year, the Secretary or the Secretary of
5 Health and Human Services, as appropriate, shall
6 submit to the President a recommended budget for
7 programs and services provided by the United States
8 to members of Indian tribes because of the status of
9 those members as Indians (including funding rec-
10 ommendations for newly-acknowledged Indian tribes
11 based on the information received under paragraph
12 (1)) for inclusion in the annual budget submitted by
13 the President to Congress in accordance with section
14 1108 of title 31, United States Code.

15 **SEC. 9. REGULATIONS.**

16 The Secretary may—

17 (1) promulgate such regulations as are necessary
18 to carry out this Act; and

19 (2) maintain in effect all regulations contained
20 in part 83 of title 25, Code of Federal Regulations (or
21 any successor regulations), that are not inconsistent
22 with this Act.

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[Report No. 108-403]

A BILL

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

NOVEMBER 10, 2004

Reported with an amendment